and/or contractors. U S WEST insures its employees/automobiles and expects that interconnectors do the same. Automobile accidents occurring outside a central office but on U S WEST's premises (especially when interconnector employees are entering or exiting U S WEST buildings), may be perceived as being caused by U S WEST employees. Thus, such accidents could well give rise to claims against U S WEST. While the initial "insult" of the claim may result in no eventual liability, U S WEST should not have to look around for a responsible party or payment of a claim caused, in the first instance, by an interconnector. Indeed, for this reason, U S WEST requires that it be identified as an "additional insured" with regard to the coverage certificate. 198

The insurance requirements U S WEST has established for interconnectors are of the general amount that U S WEST has in place for third parties who have (in the past) or are (currently) leasing space in U S WEST administrative space, where the risk of loss is considered fairly low. Despite the fact that central offices are revenue generating assets (see discussion at II.A.2(e)(1)), rather than administrative space, U S WEST set the same level of insurance for EIC service as it does for administrative space. 199 Again, it is evident that the amounts established by U S WEST represent the minimum amounts that a company the size of U S WEST would consider prudent.

¹⁹⁸See id.

¹⁹⁹Generally, as the level of risk increases, the level of mandated insurance coverage increases.

Additionally, the insurance amounts that U S WEST set for EIC service are the <u>minimum</u> insurance requirements that U S WEST imposes on our <u>own</u> contractors and suppliers doing business in our central offices.²⁰⁰ In light of the fact that U S WEST imposes such requirements on businesses with whom U S WEST has <u>chosen</u> to have a business relationship, it is all the more appropriate that U S WEST be entitled to impose such insurance requirements on third party strangers who now occupy its real estate.²⁰¹

After some period of time and experience with expanded interconnection and collocation, U S WEST's insurance requirements will certainly be reviewed for necessity. But, until that experience has been obtained, it would be the height of regulatory overkill for the Bureau to prescribe for U S WEST what its "appropriate" insurance requirements are or should be.

²⁰⁰Certain of our contractors, especially those installing network equipment or working in our computer operations must carry insurance of at least \$5M and sometimes more.

²⁰¹The insurance coverages that U S WEST has required of interconnectors are a pittance when looking at the "big" picture. Above and beyond its own self-insurance limits (which exceed those being required of interconnectors), U S WEST purchases more than \$100M of excess insurance coverage for employees liability, automobile liability and general liability. We also purchase more than \$300M of excess property coverage on our real and personal property.

It is obvious that should a serious catastrophic kind of event occur, resulting in destruction to a central office, the interconnectors' contributions would be appropriate to their station (unless they were the cause of the catastrophe, in which case they would contribute less than their fair share of the recovery).

2. "LECs that do not permit interconnectors to self-insure under any circumstances should explain their reason for that policy. Parties should discuss the conditions under which an interconnector could be considered qualified to use self-insurance. Parties opposing self-insurance by all or some interconnectors should explain why self-insurance should not be permitted as an option to qualified interconnectors. Parties favoring self-insurance by interconnectors should describe the conditions under which interconnectors, or some interconnectors, could reasonably be self-insured."²⁰²

U S WEST does not permit interconnectors to self-insure. We require evidence of insurance coverage for an interconnector by at least a B+XIII carrier. 203

The decision not to permit self-insurance by an interconnector was one jointly arrived at by our Risk Management Organization and Product Management. While an administrative organization might be able to be established to handle the processing of self-insuring interconnectors, 204 U S WEST has no business interest in creating such an organization.

²⁰²Investigation Order at 36 ¶ 63(B).

²⁰³See U S WEST Tariff F.C.C. No. 1 at § 2.3.13(A)(2).

²⁰⁴Such an administrative organization would be required, for example, to engage in certain activities. At a minimum, such an organization would require a written request by an interconnector to self-insure, with the specifics of the proposal identified. A certain amount of past audited financial information (such as Dunn and Bradstreet reports) would be required. The organization would be required to review the information and to determine each requesting interconnectors' ability to respond in the ordinary course of business to a loss equivalent to the amount proposed by the self insurance levels. Certain other documents would be required: state certificates demonstrating evidence of self-insurance for workmen's compensation and automobile coverage. And, in any event, U S WEST would always reserve to itself the authority to reject the application for self-insurance, in its sole discretion.

U S WEST is in the telecommunications and information business -- not the insurance and/or financial auditing/verification business. While other LECs might be willing (and interested) in undertaking the kinds of activities necessary to allow for self-insuring interconnectors, U S WEST has no interest in establishing or maintaining such an organization.²⁰⁵

3. "LECs that require interconnectors to use underwriters with particular rating levels should explain why these requirements are reasonable. They should also explain why their particular rating level requirements are reasonable. Finally, they should explain the differences, if any, between the rating levels of their own insurers and the rating levels they require of the interconnectors' insurers."

U S WEST's EIC Tariff does require that interconnectors maintain insurance via underwriters with at least a Best's B+XIII rating. 207 This requirement is eminently reasonable.

U S WEST is requiring interconnectors to maintain insurance as a financial backup to their responsibility to reimburse U S WEST for damage that they cause and their obligation to indemnify U S WEST against certain losses. 208 Clearly, then, U S WEST is

 $^{^{205}}$ If such an organization <u>were</u> created, the cost of its establishment and on-going operations would be a cost identifiable to, and expected to be borne by, the EIC services U S WEST provides.

 $^{^{206}}$ Investigation Order at 36 ¶ 63(c).

²⁰⁷See U S WEST Tariff F.C.C. No. 1 at § 2.3.13(A)(2).

²⁰⁸See e.g., id. at §§ 2.3.1(C)(2), 2.3.8(B).

concerned that the underwriting insurance carriers be solvent and have the ability to pay claims.

U S WEST requires its <u>own</u> insurance carriers to be rated no less than A- (excellent). The primary difference between an A rated and a B rated insurance underwriting company has to do with their sustainability over time and varying economic conditions. Best's B+ rated carriers have a demonstrated past performance of being able to meet their policy holder and other contractual obligations, <u>but</u> their financial performance is more susceptible to unfavorable changes in underwriting and economic conditions than A rated carriers.

Best's financial size category rating of XIII reflects the financial capacity of an insurer. Carriers with this rating have a policyholders surplus of \$1.25 to \$1.5 $\underline{B}.^{209}$

4. "LECs requiring proof that an interconnector's insurance is effective at a certain time should explain why their policy is reasonable. Parties opposing the LECs positions should explain why the alternative they offer is superior. Parties should comment on the type of proof required as well as the time that the insurance must be in effect."

U S WEST requires that interconnectors' provide U S WEST with certificates of insurance <u>prior</u> to gaining access to our premises.²¹¹ This is a very common business practice.

²⁰⁹Policyholders surplus determines the size of the risk which an insurer may prudently underwrite, assume or retain.

²¹⁰Investigation Order at 36 ¶ 63(d).

²¹¹See U S WEST Tariff F.C.C. No. 1 at § 2.3.13(A)(2).

It would be total form over substance for U S WEST to require interconnectors to maintain insurance to cover certain losses and monetary obligations and then not require demonstrated proof of the necessary coverage. Prudent asset management requires otherwise.

There should be no adverse result to interconnectors from this requirement. Insurance carriers and brokers/agents provide these services for their insurers at no charge. Acceptable certificates of insurance are standard industry ACORD forms.²¹²

- L. "Are the LECs' liability provisions reasonable?"²¹³
- 1. "LECs should explain the policies articulated in their tariffs concerning an interconnector's right of action against a LEC for negligence, gross negligence, willful misconduct, or intentional harm. LECs should explain why these provisions are reasonable. They should also explain why it is reasonable for them to include language limiting their own liability while they hold interconnectors liable for more than they would assume under their tariffs."

The fact that the Bureau has deemed it appropriate to "investigate" the LEC "liability provisions" in this isolated proceeding borders on incredible. Why such an investigation is warranted with regard to some category of customers called "interconnectors," as opposed to the LEC-customer universe as a whole, is totally unexplained and defies logic.

²¹²ACORD forms represent industry standards.

²¹³Investigation Order at 36(L).

 $^{^{214}}$ Id. at 37 ¶ 66 Item (a). Item (b) is directed to a specific LEC, and U S WEST, therefore, does not respond to it.

What this area of inquiry does demonstrate, however, is that the Bureau (and perhaps the Commission, as well) sees the LECs "expanded interconnection" offerings as something above and beyond (or at least very different from) the LECs' "standard" tariffed services. The propriety of such determination is worth pursuing.

Most LECs, and U S WEST in particular, have argued that the Commission prescribed EIC service <u>is</u> different from all other LEC services: At its most egregious, it amounts to a forcible and compelled occupation of LECs property in violation of the Fifth Amendment to the Constitution. At its most benign, it catapults the LECs into a business they never voluntarily agreed to enter, <u>i.e.</u>, the real estate leasing business.

But, assuming that the Bureau was not intending to validate these aspects of the "differences" between EIC service and other LEC services, the reasons for the Bureaus' sudden interest in the LECs' limitation of liability provisions is enshrouded in mystery.

U S WEST has had "liability" provisions in our tariffs for longer than MFS or Teleport have been in existence. The general theory is that by limiting LECs' liabilities to third parties, and permitting them to recover from indemnitees, LECs' rates can remain lower than they otherwise would, with regard to the general ratepaying customer.

What prompts regulatory concern over this matter at this time can be attributed more to politics and shrill hyperbole than

to any reasonable lack of understanding as to the reasons for -or the particular text of -- those provisions. Either the theory
behind common carrier limitations of liability is true or it is
not. If it was true <u>before</u> EIC service, it remains so. If it
was not (or is no longer true) then a separate investigation into
the provisions overall should be conducted.

U S WEST's EIC service liability provisions were modified only slightly from our general limitation of liability provisions. Those provisions make clear that "The Telephone Company shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall the Telephone Company for its own act or omission hold liable any other carrier or customer providing a portion of a service." Simply put, for most actions both parties are responsible for their own actions.

Having assumed responsibility, however, the Telephone Company (i.e., U S WEST) then "limits" its responsibility in certain circumstances: with regard to labor difficulties, governmental orders, civil commotions, criminal actions against us, acts of God and other actions beyond our control; 216 for "casualty" (not amounting to any of the force majeure

²¹⁵U S WEST Tariff F.C.C. No. 1 at § 2.1.3(A)(1). This provision pre-existed the introduction of EIC services.

²¹⁶Compare id. at § 2.1.3(A)(4). This provision pre-existed the establishment of EIC services.

circumstances);²¹⁷ with regard to personal or bodily injury to interconnector's employees, agents, contractor's or invitees;²¹⁸ with regard to damage to the interconnector's personal property and/or fixtures -- regardless of cause.²¹⁹

Thus, in the matters of <u>force majeure</u> and the matter of bodily injury, U S WEST assumes the <u>same</u> liability with regard to interconnectors as it does with regard to all other customers: <u>either</u> none or <u>only</u> for willful misconduct. It is really only in the matter of "property" damage that U S WEST's limitations of liability changed, and then only slightly. Rather than assuming liability for our "willful misconduct" with regard to EIC service (as is the standard for other U S WEST-provided services), ²²⁰ U

²¹⁷See <u>id.</u> at § 2.1.3(D). This provision was <u>added</u> for EIC service.

²¹⁸See <u>id.</u> at § 2.1.3(C)(1). U S WEST has no liability "in the absence of willful misconduct." This provision was added to the EIC Tariff, but was modelled on the pre-existing provision § 2.1.3(B)(1). For the reasons discussed below in the text, U S WEST deemed it appropriate to address bodily/personal injury separate and apart from property damage, which the existing § 2.1.3(B)(1) did not do.

²¹⁹See <u>id.</u> at § 2.1.3(C)(2).

S WEST sought to separate out liability for bodily injury versus property damage.

Historically, U S WEST did not usually come into contact with the "property" of customers (especially since the conclusion of Computer II and divestiture). Thus, the limitation of liability pre-existing EIC service was rather vague with regard to "damage" to such property. The current limitation, as found in the General Terms and Conditions of U S WEST's Tariff F.C.C.

No. 1 at § 2.1.3(B)(1), addresses "bodily injury" specifically but "liability" in a very general sense. In most circumstances, the "liability" would be for lost service, rather than damage to property.

In response to recommendations from our Asset Protection and Risk Management Organization, it was determined that <u>all</u> personal property damage matters should be handled via the vehicle of insurance, regardless of fault or responsibility. Thus, it is something of a misnomer to say that U S WEST has "limited" its liability with regard to property damage to an interconnector's property. Rather, U S WEST has <u>no</u> liability with regard to it at all, <u>even</u> if something that causes it damage was the result of our actions.²²¹

^{220(...}continued)
2.1.3(C)(3) and 2.3.13(B)(6) to our EIC Tariff, so that
interconnectors would insure against such outages, however caused
(by mistake, negligence, gross negligence, willful misconduct).
Such a limitation is a common contractual provision.

 $^{^{221}}$ In this regard, U S WEST's insurance provision (§ 2.3.13 and § 2.1.3(C)(2)) are amendments to, or restrictions of, the broad language of § 2.1.3(A).

Even more perplexing than the Bureau's sudden interest in the LEC limitation of liability provisions is its suggestion that the LEC should explain why it holds interconnectors to a standard of liability higher than the LEC itself assumes. In essence, the Bureau inquires as to why the LEC's tariffs do not demonstrate something along the lines of "reciprocity." 222

What this "reciprocity" is, is not clearly explained. It appears to take the following formulation: If a LEC restricts its liability in its tariff to something like "gross negligence," then a LEC should seek no liability (or recompense) from an interconnector in the absence of similar liability. There are a couple of evident problems with this formulation.

A LEC tariff is <u>its</u> statement of the terms and conditions under which it will offer a service. Those terms and conditions, in turn, aid in the establishment of the cost (and the ultimate price) that a service offering assumes. While the tariff is a contract, to be sure, it is not a mutually negotiated one (with <u>quid pro quos</u> for things like increased assumptions of liability).

Assume, for purposes of example, that a LEC assumed liability only for gross negligence and that the LEC accorded similar liability assumption for all its customers. Who

²²²See Investigation Order at 36-37 ¶ 64.

²²³This "assumption" would probably not show up in a LEC tariff provision, <u>per se</u> (because it is not the LEC's job to state customer "liabilities"), but rather in the "indemnification" provisions. <u>Compare PacBell's observation that</u> (continued...)

the LEC's gross negligence and the individual customer's gross negligence? NOBODY? Obviously, there is a problem. Someone bears that responsibility -- the "general ratepaying body" or the Company overheads. If a LEC accorded interconnectors the "special treatment" of having no indemnification obligation unless they were grossly negligent, all other LEC customers would pay for the according of that privilege. 224

While U S WEST cannot speak for all LECs, we know why our tariff does not demonstrate reciprocity: No other customer is accorded reciprocity and we see nothing special about

[&]quot;reciprocity" discussions in this matter are illogical, since
only the LEC is providing service. See Investigation Order at 37
¶ 65.

For example, as stated, under U S WEST's general responsibility/limitation provisions, <u>all</u> customers assume responsibility for their actions (see § 2.1.3(A)(1)). U S WEST does not generally address a customer's liability for its actions <u>except</u> in certain circumstances: indemnification (§§ 2.1.3(A)(2), 2.1.3(A)(5), 2.1.3(C) (EIC service) and 2.3.8(A), 2.3.8(C) (EIC service)) and customer reimbursement for damages to U S WEST's facilities (see §§ 2.3.1(A) and 2.3.1(C)(2) (EIC service).

 $^{^{224}\}mathrm{As}$ U S WEST's Tariff F.C.C. No. 1 at § 2.1.3(A)(1) now stands (and has stood for some years), customers have liability for their actions <u>regardless</u> of fault (whether the action was a mistake or was the result of intentional misconduct).

In essence, then, what the Bureau inquires about is the possibility of making an interconnector (as opposed to all other customers) responsible for reimbursement to U S WEST for damage caused by an interconnector only if its actions in causing the damage reach a certain threshold; or in reducing an interconnector's indemnification obligations. Such special treatment is unwarranted either by the status of "interconnectors" or by the service they purchase.

"interconnectors" that would warrant such accommodation. If the Bureau deems the fate of the interconnectors unfortunate, then it should open a general docket on the limitation of liability/ indemnification provisions of common carriers and work the matter through to the benefit of <u>all</u> LEC customers. LECs should not be required to indemnify interconnectors for LEC negligence, when they do not do so for any other customer.²²⁵

- M. "Are the LECs' provisions regarding whether to bill from their state or interstate expanded interconnection tariffs reasonable?" 226
- 1. "LECs should discuss whether the use of the ten percent rule to determine the jurisdictional nature of the service is reasonable. All parties commenting on this issue should address how the ten percent rule, as used in the LECs' special access tariffs, should apply to the rate elements in the collocation tariffs. Parties opposing the use of this method should explain why they believe the alternative they offer is more reasonable."

Clearly, the Commission's expanded interconnection policies are directed to <u>interstate</u> traffic and those carriers who transport such traffic. Such provisions have not been applied by the Commission preemptively to the states.

²²⁵Clearly, if LECs are required to change their limitation of liability/indemnification provisions, costs (and associated prices) for LECs' services will increase. Interconnectors — like the rest of a LEC's customer base — should share in those increases.

²²⁶Investigation Order at 38(M).

 $^{^{227}}$ Id. at ¶ 68, Item (a).

Thus, perhaps out of undue caution, ²²⁸ U S WEST addressed this issue in our EIC Tariff. While we do not, currently, have any effective state expanded interconnection (or collocation) tariffs, we expect to in the future. To avoid future disputes regarding which tariff an interconnector should purchase EIC service from, U S WEST inserted this provision.

To the extent that a customer of an interconnector is generating, or the interconnector itself is transporting, more than ten percent interstate traffic through their lines, U S WEST would charge for EIC service pursuant to the federal tariff and rates.

As the Bureau has recognized, it would appear to be reasonable for the LECs to use the ten percent rule to determine which tariff to use for billing special access expanded interconnection service. We seriously doubt that anyone will be able to argue to the contrary.

N. "Are the LECs' provisions regarding letters of agency reasonable?" 230

²²⁸MFS filed a complaint against U S WEST in 1989, an aspect of which argued that we did not attempt to determine whether a customer's traffic was interstate or intrastate. <u>See</u> Complaint of Metropolitan Fiber Systems of Minneapolis/St. Paul, Inc., File No. E-89-342, filed Sept. 7, 1989, at ¶ 7. While the matter was obviously one of contention, it was (and remains) U S WEST's position that customers are the essential determining (and reporting) entities in this regard. But, perhaps, they need to be reminded of the Commission's requirements on occasion and in circumstances where it might be meaningful.

²²⁹See <u>Investigation Order</u> at 38 ¶ 67.

²³⁰Id. at 39(N).

- 1. "Is it reasonable for LECs to refuse to honor letters of agency allowing an interconnectors' customers to negotiate services with a LEC on the interconnector's behalf? Parties opposing the use of LOAs by interconnectors or their customers should explain why allowing those customers the option of using LOAs for billing or ordering end-to-end service is unreasonable. Parties commenting on this issue should explain the impact on the ordering process as well as the billing process if their position is adopted."²³¹
- 2. "Should LECs state in their tariffs that they will accept an order for end-to-end service which includes a request to install the cross-connect to the interconnector's space, when the order is placed by an interconnector's customer using a letter of agency from the interconnector? Parties commenting on this statement or offering alternatives should explain why their suggestions are reasonable."
- 3. "Should LECs state in their tariffs that they will bill charges for the special access cross-connect rate elements and subtending end link services to third parties specified by the customers when ordering the services? Parties commenting on this statement or offering alternatives should explain why their suggestions are reasonable."²³³

U S WEST's EIC Tariff does not deter an interconnector from ordering EIC service in order to best serve its own customers. The services that the interconnector then provides to its customers, however, should be billed by the interconnector (or its agent).

The way that the Commission has prescribed the EIC offering, "any entity" can purchase EIC. Thus, an interconnector can do so, or a large business customer can do so on its own behalf.

²³¹<u>Id.</u> at 40, Item (a).

 $^{^{232}}$ Id. at Item (b).

²³³<u>Id.</u> at Item (c).

<u>But</u> part of the EIC offering is central office occupation. <u>If</u> a customer is <u>not</u> occupying the LEC central office, they are <u>not</u> purchasing EIC service. In essence, EIC is a Commission-mandated "bundled service:" it combines central office space (leased physical space) with an expanded interconnection channel termination ("EICT") (<u>i.e.</u>, the cross connect).

As the Bureau observed, U S WEST's EIC Tariff states that U S WEST will only bill (as a matter of its common carriage service) the customer of record, generally the interconnector. U S WEST will not permit various entities to be billed for varius elements of EIC service. Thus, we will not allow Letters of Agency ("LOA") to be used for this purpose. Because of the particular nature of the interconnector responsibilities associated with EIC service, such as the insurance obligations, the interconnector occupying the leased physical space is and will remain the "customer of record." 235

If an entity is not occupying the LEC central office, the "service" they are receiving is some kind of "derivative" service

²³⁴See <u>Investigation Order</u> at 39-40 ¶ 71. U S WEST's ordering and billing process would be impacted by splitting up the EIC offering into separate piece-parts. It would take time; it would cost money; and it would require tracking certain components of the offering to different customers of record. Over time, it is clear, that matters such as maintenance and repair calls would become unduly cumbersome as U S WEST attempted to discern responsibility for the EIC service as between the interconnector and the interconnector's customer.

²³⁵U S WEST is willing, however, to allow the subtending services to be billed to either the end user or the interconnector. U S WEST's ordering and billing systems are set up to allow separate ordering and billing for the special access services that would subtend the EIC service.

-- not EIC service. Arrangements for that kind of derivative third party billing should be made through U S WEST's deregulated billing and collection offering. 236

- O. "Are the LECs' provisions regarding inspections of interconnector space and facilities reasonable?"237
- 1. "LECs should identify their provisions governing inspection of interconnector space and facilities, including whether the interconnector must pay for such inspections, and state why they believe their requirements are reasonable."
- 2. "Parties objecting to the LECs' requirements should explain why they believe those requirements are unreasonable. They should also specify under what conditions, if any, they believe LEC inspections of interconnector space and facilities are reasonable, addressing whether notice should be required prior to inspection, when and how many times a LEC should be permitted to conduct inspections (e.g., at the time the service is initially installed and no more than once in each succeeding 12-month period, unless it is an emergency), and whether and in what circumstances a LEC should be permitted to charge an interconnector for an inspection."

²³⁶U S WEST provides EIC service to the interconnector. The interconnector should be responsible for billing and collecting for its service to its customers. The fact that one portion of U S WEST's EIC service might be directly passed through from an interconnector to an interconnector's customer should not change that fact. That is not an uncommon business phenomenon.

Just as U S WEST bills "toll" charges to end users on behalf of interexchange carriers, it would at least give preliminary consideration to billing "EIC charges" to customers of interconnectors. However, that billing would be done pursuant to U S WEST's deregulated billing service, not its EIC tariffs.

²³⁷Investigation Order at 40.

²³⁸<u>Id.</u> at 42, Item (a).

²³⁹<u>Id.</u> at Item (b).

In U S WEST's EIC Tariff, U S WEST reserves the right

to inspect the completed installation of the interconnector's equipment and facilities and to make subsequent and period inspections of the interconnector's equipment and facilities occupying leased physical space(s) and associated Entrance Structure. [U S WEST] will notify the interconnector in advance of such inspections, and the interconnector shall have the right to be present at the time of inspection.²⁴⁰

U S WEST's inspection provisions are eminently reasonable.²⁴¹ Since U S WEST maintains the property insurance coverage on the core and shell of the building, we must require all tenants to agree to inspections of their leased space. We have certain contractual obligations with our insurance underwriters that require periodic inspections.²⁴² Thus, our EIC Tariff must make accommodations for those.

Such inspections do not pose a demonstrated or serious threat of abuse or interference with an interconnector's ability to provide service. Additionally, U S WEST recently amended

²⁴⁰U S WEST EIC Tariff at § 21.4.1.5.

²⁴¹In Transmittal No. 383, filed with the Commission July 16, 1993, U S WEST introduced an Inspector Labor rate. This Inspector Labor rate is applied when an interconnector self-provisions the fiber optic cable to its leased physical space and for any subsequent access to said cable -- not for inspection of the interconnector's leased physical space.

²⁴²U S WEST's property insurance carrier (St. Paul Insurance Company) requires, as a condition of insuring U S WEST, that it (or its agents) be permitted to perform inspections of U S WEST's property with regard to our life, health, and safety practices. U S WEST pays approximately \$300,000 each year to these property inspectors. This represents approximately 250 inspections.

 $^{^{243}}$ TCG, for example, phrases this issue as one involving pure speculation: "there exists a serious potential for abuse See TCG at App. A, Item 7, p.1.

our tariff to reflect the concerns of some commenting parties regarding U S WEST's use of confidential information that might be gleaned during such an inspection. U S WEST's tariff now states that we "will maintain the confidentiality of any information derived by it during the course of an inspection, and will not use such information in its strategic planning or marketing endeavors."

Unlike some LECs, U S WEST's proposed tariff reflects no charge for the inspections²⁴⁵ we anticipate conducting.²⁴⁶
While we express no opinion on the propriety of charging for such inspections, U S WEST has deemed it in our best business interests that such inspections be absorbed as an overhead protection of our property, rather than a separately identifiable charge. Thus, at least this objection²⁴⁷ does not pertain to U S WEST.

On the whole, U S WEST's EIC Tariff inspection provisions are reasonable and should be permitted to remain in effect, as is.

²⁴⁴See concern of ALTS, Appendix D (U S WEST), at p. 7.

²⁴⁵U S WEST could have charged interconnectors for a portion of the inspections associated with our insurance coverage. However, U S WEST felt that it would be an administrative nightmare so we chose not to. Furthermore, the insurance inspector pricing is subject to change annually.

²⁴⁶Of course, an interconnector out of compliance will have to incur those costs associated with becoming compliant.

²⁴⁷See, <u>e.g.</u>, TCG at App. A, Item 7.

P. "Should LECs be permitted to include provisions regarding the payment of taxes and similar assessments by interconnectors?" 248

"U S West, and any other LEC with a similar provision, should explain why they believe it is reasonable to include such provisions in their tariffs, what they believe would be the consequence of deleting such provisions and, given these consequences, whether deletion of such provisions would be reasonable. Parties opposing such provisions should explain why they believe tariff provisions regarding the payment of taxes by an interconnector are not relevant to, and should not be included in, the LECs' interconnection tariffs."

The Bureau correctly observes that U S WEST's EIC Tariff contains a provision requiring interconnectors to pay, before delinquency, all taxes and other charges assessed on the interconnector's operations and equipment located at the leased physical site. 250

The reason this provision was included in U S WEST's tariff, and an explanation of U S WEST's intentions regarding such provision are detailed at II.G.2., supra. Below is an almost verbatim recitation of the material that can be found therein.

Upon inquiry from the Bureau staff regarding U S WEST's tax provision, we clarified that we did not intend to put ourselves in the position of tax collectors. Rather, the tariff provision was meant to operate in a prophylactic capacity: if an

²⁴⁸Investigation Order at 43.

²⁴⁹Id.

 $^{^{250}}$ See <u>id.</u> at ¶ 78. <u>And see U S WEST Tariff F.C.C. No. 1 at § 2.3.1(D).</u>

interconnector did pay all relevant taxes, there would be no tax lien on the interconnector's property. It was the absence of a tax lien that was important to U S WEST, not the payment of taxes per se.

In an attempt to allay the Bureau's concerns, U S WEST agreed with the Bureau staff to <u>amend</u> that tariff section such that our intentions were clear: U S WEST was not interested in being a "tax collector," but in assuring that a tax lien was not levied on the property of the interconnector within our central office. If such a lien were levied, U S WEST would consider such action to be a "material breach." Subsequently, U S WEST <u>did</u> amend this tariff provision.

U S WEST's provision that the assessment of a tax lien would constitute a material breach is eminently reasonable. No other "class" of customer -- other than "interconnectors -- would be in a position to have property on a LEC premises that might be subject to a tax (or other kind of) lien. No private owner of property should have to suffer such an intrusion. U S WEST should not be required to house equipment of an interconnector

²⁵¹Whether or not the law would actually allow for an execution of a lien on an interconnector's "non-exclusive right to use" U S WEST's real estate, or whether a lien placed on the interconnector's personal property and/or fixtures, is not the point. Any lien that is imposed on either the interconnector's limited interest in U S WEST's property or the tangible property located in U S WEST's central office (whether or not it is later determined to be valid) should provide grounds for U S WEST to require the interconnector to vacate. U S WEST should not be required to be a silent -- though affected -- party to a dispute between the interconnector and some alien third party.

that is encumbered with "rights" of third parties who are strangers to the fundamental EIC service.

Furthermore, in certain circumstances the existence of liens affords those who are strangers to the EIC arrangement with certain rights to the property of the interconnector -- rights that U S WEST has attempted to reserve to itself through its equipment lien provision. Our tariff/contractual rights are potentially diminished. U S WEST should not be put in such a situation without affording us the opportunity to demand that the interconnector quit and vacate the premises or cure (pay off) the lien.

Despite the legitimacy of U S WEST's tax provision, U S WEST is agreeable to removing it. We will amend our "material breach" provision to provide that a lien (of any type -- both on the personal property of the interconnector as well as on "the right to use the EIC leased physical space") constitutes a material breach, triggering our right to reoccupancy. How the lien got there (non-payment of taxes, etc.) will be irrelevant.

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III. CONCLUSION

For the above-stated reasons, U S WEST'S EIC Tariff provisions being reasonable in both their costs and rates and representing prudent exercises of management prerogative, should be sustained and allowed to remain in effect.

Respectfully submitted,
U S WEST COMMUNICATIONS, INC.

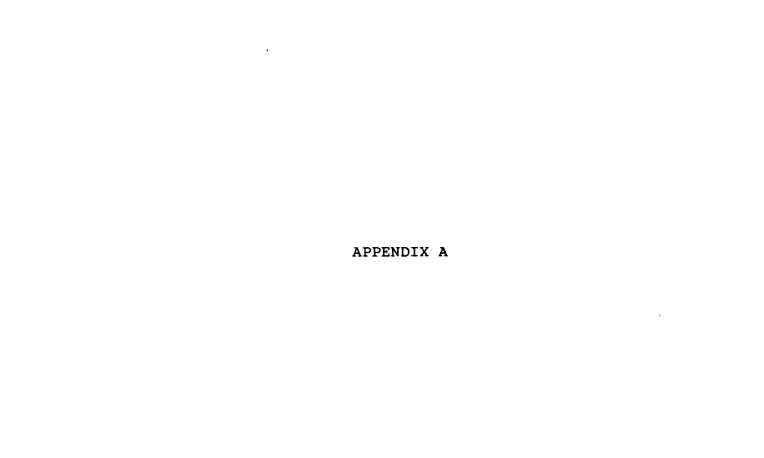
By:

Kathryf Marie Krause 1020 19th Street, N.W. Suite 700 Washington, D.C. 20036 (303) 672-2859

Its Attorney

Of Counsel, Laurie J. Bennett

August 20, 1993



DS1 Cross-Connection Cable and Cable Support Function

Recurring Rate

	Rate Element Name #1 DS1 EICT	Rate Element Name #2	Rate Element Name #3	Rate Element Name #
1 TOTAL INVESTMENT: List Plant & Equip.	\$260.08	\$	\$	\$
2 List: Name - Depr Life 11.46 yrs	\$	\$	\$	\$
2232.2 and 2232.3 (jumpers,	\$260.08			
regenerator cables, DSX cables)	\$			
3 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	\$
4 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	\$
5 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	S
6 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	s
7 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	\$
8 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	S
9 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	\$
0 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	S
11 List: Name - Pt. 32 Acct No Dep. Life	S	\$	\$	\$
2 List: Name - Pt. 32 Acct No Dep. Life	\$	\$	\$	\$
13 List: Name - Pt. 32 Acct No Dep. Life	S	\$	\$	S
	\$	\$	\$	\$
	S	\$	\$	\$
16 List: Name - Pt. 32 Acct No Dep. Life		S	Š	S
17 List: Name - Pt. 32 Acct No Dep. Life		\$	\$	S
18 List: Name - Pt. 32 Acct No Dep. Life		S	\$	S
19 List: Name - Pt. 32 Acct No Dep. Life		\$	S	S
20 List: Name - Pt. 32 Acct No Dep. Life		\$	\$	S
DEPRECIATION EXPENSE	\$25.79		\$	S
22 COST OF MONEY (\$ Amount)	\$14.32		\$	S
23 COST OF MONEY (Percentage)	11.50%	* %		
24 FEDERAL INCOME TAX	\$6.35		\$	
25 STATE AND LOCAL INCOME TAX		*		\$
	\$	3	<u>\$</u>	\$
OTHER TAX: List Taxes	\$3.13 \$	\$	<u>\$</u> \$	\$
List: Property Tax				\$
28 List: Ad Valorem	\$3.13 \$		\$	\$
29 List:		\$	\$	\$
30 List:	\$	\$	\$	\$
31 List:	\$	\$	\$	\$
32 List:	\$	\$	\$	\$
3 MAINTENANCE EXPENSE	\$4.10	<u> </u>	\$	\$
ADMIN and OTHER EXPENSE: List Expense	\$5.72		\$	\$
Product Mgmt - 6611	\$0.81		\$	\$
36 Sales - 6612	\$0.38		\$	\$
Number Services - 6620	\$0.29		\$	\$
88 External Relations - 6722	\$0.14		\$	\$
39 Gen. Office Exp - 6724-7	\$0.19		\$	\$
Uncollectibles - 5301-2	\$0.46		\$	\$
1 Computers - 6124	\$0.19		\$	\$
2 Business Fees	\$0.43		\$	\$
3 Billing and Collections	\$2.83	\$	\$	\$
14 List: Name - Pt. 32 Acct No.	\$	\$	\$	\$
5 List: Name - Pt. 32 Acct No.	\$	\$	\$	\$
6 List; Name - Pt. 32 Acct No.	\$	\$	\$	\$
7 List: Name - Pt. 32 Acct No.	\$	\$	\$	S
8 List: Name - Pt. 32 Acct No.	\$	S	S	\$
9 List: Name - Pt. 32 Acct No.	\$	\$	\$	\$
0 List: Name - Pt. 32 Acct No.	\$	\$	\$	\$
1 ANNUAL COST PER UNIT	\$59.41		\$	\$
2 MONTHLY COST PER UNIT	\$4.95		\$	S
3 MONTHLY COST PER UNIT	\$7.13		\$	\$
UNIT OF MEASUREMENT	Per Termination	*		•
5 RATIO: Rate / Direct Cost	1.59			
6 RATIO: Rate / Unit Cost	1.44			1

Notes

⁽¹⁾ Cross - Connection Cable and Cable Support Function includes costs for all cabling and cable support structures between interconnector's space and LEC's MDF.

⁽²⁾ Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS1 arrangement, etc.